IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1756 OF 2000

1. Vijay Surajmal Kanodia & Anr. ..Petitioners.
(Org.Defts.)

Versus

Shri Mulji Bhimji Aiya ..Respondent.
(Org.Pltff.)

Shri Jimmy Mehta with H.G. Bhambhani for the Petitioners.

Shri V.N. Kantawala i/by M/s. Kantawala & Co. for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 15TH JUNE, 2005

ORAL ORDER :

1. Heard Advocate for the Petitioners and Respondent. The Advocate for the Respondent initially raised a preliminary objection to the maintainability of this writ petition on the ground that the impugned order against which the writ petition is filed is an

order under Order 8, Rule 5 and 10 of the C.P.C. and, therefore, it was an appealable order. He relied on the judgement of this court reported in **1998 (3) Mah. L.J. 924,** wherein the Division Bench of this Court has held that in a decree under Order 8, Rule 5 or 10, the only remedy is to file Appeal. As against this counsel for the Petitioners contended that in fact the Petitioners had filed an Appeal but the Respondent raised an objection that no Appeal is maintainable against the Order, which came to be passed under section 6 of the Specific Relief Act. In view of this objection of the Respondent, the Appeal was withdrawn and then the writ petition was filed.

2. From the aforesaid, facts it is clear that the Respondent is trying to raise objection after objections and if the writ petition is not maintainable and the Appeal was maintainable, the same was already filed but at that time objection was raised and the Appeal had to be withdrawn. Now, if the objection of the respondent is accepted then there will be no remedy available to the Petitioners. Hence, the objection is rejected.

3. So far as the merits are concerned, the decree came to be passed by the court under section 6 of the Specific Relief Act. Section 6 reads thus :-

6. Suit by person dispossessed of immovable property .--(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

. (2) No suit under this section shall be brought -

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

. (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

. (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

4. Counsel for the petitioners contended that the respondent -plaintiff was not dispossessed otherwise

than due course of law. He pointed out that there were proceedings under section 145 of the Cr.P.C. between the parties, where the petitioners lost before the Magistrate. He preferred writ petition, where he succeeded. The plaintiff filed writ petition; but the plaintiff failed. The matter went up to the Supreme Court at the instance of the plaintiff. There also the plaintiff failed and then in consequence of those orders, the petitioners -defendants came to be placed in possession of the property and therefore, there is no dispossession otherwise than due course of law. But the trial court failed to take into consideration this important aspect of the matter and wrongly passed the impugned order i.e. decree in favour of the plaintiff/respondent. My attention was also invited by the learned counsel for the petitioners to paragraph 30 of the plaint, wherein the plaintiff has stated - " The plaintiff submits that the order of the Hon’ble Supreme Court was passed on 11th March, 1994 and as such the present suit filed by the plaintiff under the Provisions of the Specific Relief Act, within six months from the date of the said order of the Supreme Court. ....." . As against this, learned counsel for the respondent relied upon **AIR 1959 Supreme Court 960** in the case of Bhinka & Ors. vs. Charan Singh, in support of his contention that the possession taken under orders of the court under section 145 of Cr.P.C., is not in due course of law. My attention was invited

by the counsel for the Respondent to head note (f) and the relevant para -16. Head note (f) is reproduced as under :-

> (f) Criminal P.C.(1898), S. 145 (6) -- Order for possession under -- Nature of -- Does not decide title.
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> . In passing an order under S.145(6), Cr.P.C., the Magistrate does not purport to decide a party’s title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is an apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The orders are thus merely police orders and decide no question of title : 29 Ind App 24 (PC), Rel. on. (para 16)

I do not find any substance in this contention. If an order is passed under section 145 of Cr.P.C. and ultimately, the Supreme Court holds or held in favour of the petitioners and the petitioners got possession pursuant to the said order and if the plaintiff in para -30 of the plaint clearly states that the possession was taken from him or he was required to give possession to the petitioners, pursuant to the Supreme Court order, then this is not dispossession as contemplated under section 6 of the Specific Relief Act. Possession which came to be given pursuant to the revisional court's order but as stated in para 30 of the plaint, it is the possession given pursuant to the Supreme Court's order. It is the possession taken in due course of law. The judgment cited and relied upon by the counsel for the respondent does not apply at all to the facts and circumstances of this case.

5. In view of this, writ petition is allowed. The impugned judgment and decree is set aside with cost quantified at Rs. 5000/-.

Dt. 15.06.2005 (D.G.DESHPANDE,J).

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